

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

Before the Commissioner of the Division of Mortgage Lending

In the Matter of:

ABUSED & BATTERED CHILDREN – A-B-C
D/B/A NATIONAL REAL ESTATE ASSOCIATION,
Unlicensed,

and

BENJAMIN DONLON A/K/A BEN DONLON,
Unlicensed,
Respondents.

Order No. 2013-06
Case No. 2012-17

ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
ORDER TO MAKE RESTITUTION,
ORDER IMPOSING AN ADMINISTRATIVE FINE AND ADMINISTRATIVE COSTS,
AND
NOTICE OF OPPORTUNITY FOR HEARING

Issued and Entered,
This 20th day of August, 2013,
By James Westrin,
Commissioner

I.
ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
ORDER TO MAKE RESTITUTION,
AND
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS

The Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the “Commissioner”) having been statutorily charged with the responsibility and authority to administer and enforce Chapter 645F of the Nevada Revised Statutes, NRS 645F.010 *et seq.*, (the “Act”), and Chapter 645F of the Nevada Administrative Code, NAC 645F.005 *et seq.*, (the

1 “Regulation”), governing the licensing and conduct of covered service providers in the State of Nevada;
2 and,

3 The Commissioner having been vested with general supervisory power and control over all
4 covered service providers doing business in the State of Nevada pursuant to the Act; and,

5 The Commissioner having been further vested with broad authority to conduct investigations to
6 determine whether any person has violated any provision of the Act or the Regulation; and,

7 The Division of Mortgage Lending (the “Division”) having received two complaints against
8 ABUSED & BATTERED CHILDREN – A-B-C D/B/A NATIONAL REAL ESTATE ASSOCIATION
9 (“NREA”) and BENJAMIN DONLON A/K/A BEN DONLON (“DONLON”) (collectively, the
10 “RESPONDENTS”) alleging that RESPONDENTS were engaged in activities requiring licensure as a
11 covered service provider pursuant to the provisions of NRS 645F.010 *et seq.* or practices that violate
12 NRS 645F; and,

13 The Division staff having thereafter commenced an investigation of RESPONDENTS pursuant
14 to NAC 645F.440 and during such investigation determined RESPONDENTS were engaged in activity
15 requiring licensure as a covered service provider pursuant to provisions of NRS 645F.010 *et seq.* and
16 NAC 645F.050 *et seq.*; and,

17 The Division Staff having reported the results of its investigation to the Commissioner; and,

18 The Commissioner having reviewed the results of the investigation made the following
19 FINDINGS OF FACT and CONCLUSIONS OF LAW from such investigation:

20 **Findings of Fact**

21 1. NAC 645F.200 provides as follows:

22 A person shall not advertise services as, provide any of the services of, act
23 as or conduct business as a covered service provider, foreclosure
24 consultant or loan modification consultant or otherwise engage in, carry
25 on or hold himself out as engaging in or carrying on the activities of a
26 covered service provider, foreclosure consultant or loan modification
27 consultant unless the person has a license as a covered service provider,
28

1 foreclosure consultant or loan modification consultant, as applicable,
2 issued pursuant to this chapter and chapter 645F of NRS.

3 2. Pursuant to NRS 645F.310, "Covered Service" is defined to include, without limitation, all of
4 the following:

5 1. Financial counseling, including, without limitation, debt counseling
6 and budget counseling.

7 2. Receiving money for the purpose of distributing it to creditors in
8 payment or partial payment of any obligation secured by a mortgage or
9 other lien on a residence in foreclosure.

10 3. Contacting a creditor on behalf of a homeowner.

11 4. Arranging or attempting to arrange for an extension of the period
12 within which a homeowner may cure a default and reinstate an obligation
13 pursuant to a note, mortgage or deed of trust.

14 5. Arranging or attempting to arrange for any delay or postponement of
15 the time of a foreclosure sale of a residence in foreclosure.

16 6. Advising a homeowner regarding the filing of any document or
17 assisting in any manner in the preparation of any document for filing with
18 a bankruptcy court.

19 7. Giving any advice, explanation or instruction to a homeowner which
20 in any manner relates to the cure of a default in or the reinstatement of an
21 obligation secured by a mortgage or other lien on a residence, the full
22 satisfaction of the obligation, or the postponement or avoidance of a
23 foreclosure sale.

24 8. Arranging or conducting, or attempting to arrange or conduct, for a
25 homeowner any forensic loan audit or review or other audit or review of
26 loan documents.

27 9. Arranging or attempting to arrange for a homeowner the purchase by a
28 third party of the homeowner's mortgage loan.

1 10. Arranging or attempting to arrange for a homeowner a reduction of
2 the principal of the homeowner's mortgage loan when such a mortgage
3 loan is held by or serviced by a third party.

4 11. Providing the services of a loan modification consultant.

5 12. Providing the services of a foreclosure consultant.

6
7 3. Pursuant to NRS 645F.380(7), a nonprofit agency or organization, organized under Section
8 501(c)(3) of the Internal Revenue Code, that offers credit counseling or advice to a homeowners of a
9 residence in foreclosure or a person in default on a loan is exempt from licensing pursuant to NRS
10 645F.

11 4. RESPONDENTS operate or operated a covered service business out of an office located at 3235
12 S. Eastern Avenue, Las Vegas, Nevada 89104. RESPONDENTS assert that RESPONDENT NREA is
13 a nonprofit organization exempt from licensing under NRS 645F pursuant to NRS 645F.380(7).

14 5. NREA's nonprofit status under Section 501(c)(3) of the Internal Revenue Code was revoked on
15 May 15, 2010. NREA no longer qualified as an exempt nonprofit agency under NRS 645F.380(7) as of
16 May 15, 2010.

17 6. On June 17, 2011, the Division received a complaint from JR ("Complainant JR") against
18 RESPONDENTS and the Division commenced an investigation. The investigation revealed the
19 following:

- 20 a. On or about January 5, 2011, Complainant JR engaged RESPONDENTS to obtain "loss
21 litigation" services on his home loan. The services to be provided were broken up into 3
22 steps. Step one included "[c]onsultation, documentation gathering, financial studies, and
23 financial package structuring". Step two included "[s]ending financial packages,
24 authorizations and verifying that package goes to a negotiator." Step three included
25 "[n]egotiate with negotiator until we get a conclusion on the modification. Get a
26 modification contract, review and/or make changes." In exchange for promising to
27 perform the aforementioned services, JR paid to RESPONDENTS a fee of \$2,500.00.
28 The fee was paid in four installments as follows:

- 1 i. The first installment, in the amount of \$1,250.00, was paid on January 6, 2011, in
2 the form of a personal check, no. 1082, drawn on an account at WestStar Credit
3 Union and made payable to "Benjamin Donlon" with the memo line indicating
4 "Mod. Avance". The check was endorsed by "Benjamin Donlon" and negotiated
5 at WestStar Credit Union on the same day that it was issued.
- 6 ii. The second installment, in the amount of \$300.00, was paid on February 7, 2011,
7 in the form of a personal check, no. 1087, drawn on an account at WestStar
8 Credit Union and made payable to "Ben Donlon" with the memo line indicating
9 "Mod. Pmt.". The check was endorsed by "Ben Donlon" and negotiated at
10 WestStar Credit Union on the same day that it was issued.
- 11 iii. The third installment, in the amount of \$500.00, was paid on March 9, 2011, in
12 the form of a personal check, no. 1088, drawn on an account at WestStar Credit
13 Union and made payable to "Cash" with the memo line indicating "Mod". The
14 check was endorsed by "Ben Donlon" and negotiated at WestStar Credit Union
15 on the same day that it was issued.
- 16 iv. The fourth installment, in the amount of \$450.00, was paid on March 31, 2011, in
17 the form of a personal check, no. 1089, drawn on an account at WestStar Credit
18 Union and made payable to "Ben Donlon" with the memo line indicating
19 "Mediation & Mod". The check was endorsed by "Ben Donlon" and negotiated
20 at WestStar Credit Union on the same day that it was issued.
- 21 b. After learning that RESPONDENTS' paperwork filed with his mortgage lender had
22 expired, on or about June 3, 2011, Complainant JR went to RESPONDENTS' office to
23 inquire about the status of his loan modification request and was informed by DONLON
24 that, if he paid DONLON \$10,000.00, DONLON could arrange for the short sale of
25 Complainant JR's home and that Complainant JR could remain in the home and make
26 monthly payments of \$1,000.00 to \$1,200.00.
- 27 c. Complainant JR never received a loan modification or any mortgage relief as a result of
28 RESPONDENTS' efforts.

1 7. On or about June 17, 2012, the Division received a complaint from CL ("Complainant CL")
2 against RESPONDENTS and the Division commenced an investigation. The investigation revealed the
3 following:

4 a. On or about November 19, 2011, Complainant CL engaged RESPONDENTS to obtain
5 loss mitigation services. In connection with these services, Complainant CL, was
6 instructed by DONLON to stop making his mortgage payment and entered into a contract
7 which provided that "Client understands that monthly deposits, equals [sic] to their
8 mortgage payment, are to be saved during the process of procuring a loss mitigation
9 alternative. These funds are NOT to be forwarded to lender unless otherwise directed,
10 but are held in trust until completion of loss mitigation work." In exchange for
11 promising to perform loss mitigation services to Complainant CL, RESPONDENTS
12 received a fee of \$2,000.00. The fee was paid in two installments as follows:

13 i. The first installment, in the amount of \$1,000.00, was paid on November 25,
14 2011, in the form of a personal check, no. 230, drawn on an account at Bank of
15 America and made payable to "Benjamin Donlon". The check was endorsed by
16 "Ben Donlon" and negotiated at Bank of America on the same day that it was
17 issued.

18 ii. The second installment, in the amount of \$1,000.00, was paid on February 21,
19 2012, in the form of a personal check, no. 244, drawn on an account at Bank of
20 America and made payable to "Ben Donlon". The check was endorsed by "Ben
21 Donlon" and negotiated at Bank of America on the same day that it was issued.

22 b. Complainant CL never received a loan modification or any mortgage relief as a result of
23 RESPONDENTS' efforts, and, in fact, defaulted on his mortgage loan because of
24 RESPONDENTS' instruction.

25 8. Based upon information and belief, the checks written to DONLON were cashed by DONLON.
26 DONLON provided no proof in his responses that the money was deposited in the account of NREA.

27 9. NAC 645F.850 vests in the Commissioner the authority to order a person engaging in activity in
28 violation of NRS 645F or the Regulation to immediately cease and desist from engaging in the activity.

1 10. NAC 645.835(2) vests in the Commissioner the authority to order a person who engages in an
2 activity for which licensure is required under NRS 645F to pay restitution to any person who has
3 suffered an economic loss as a result of a violation of the provisions of the chapter.

4 11. NRS 645F.410(1) grants the Commissioner the authority to impose an administrative penalty of
5 not more than \$25,000 on any person licensed or required to be licensed pursuant to provisions of NRS
6 645F who violates any provisions of this chapter or any regulation adopted pursuant thereto or any other
7 applicable law.

8 Conclusions of Law

9 12. It is a violation of NAC 645F.200 for a person to advertise, engage in, or otherwise carry on or
10 hold oneself out as engaging in or carrying on the activities of a covered service provider without first
11 obtaining a license under provisions of NRS 645F and NAC 645F.

12 13. By entering into an agreement with Complainants JR and CL to provide loan modification or
13 covered services pursuant to NRS 645F and receiving compensation for the purpose of providing loan
14 modification or covered services RESPONDENTS violated NAC 645F.200.

15 14. In connection with the complaint filed by Complainant JR, RESPONDENTS received payments
16 totaling \$2,500.00. As a result of RESPONDENTS' unlicensed activity in violation of NAC 645F.200,
17 Complainant JR suffered a direct economic loss in the amount of \$2,500.00.

18 15. In connection with the complaint filed by Complainant CL, RESPONDENTS received
19 payments totaling \$2,000.00. As a result of RESPONDENTS' unlicensed activity in violation of NAC
20 645F.200, Complainant CL suffered a direct economic loss in the amount of \$2,000.00.

21 16. The Commissioner is authorized pursuant to NAC 645F.850 to order a person engaging in
22 activity in violation of NRS 645F or the Regulation to immediately cease and desist from engaging in
23 any activity that violates any provision of NRS 645F.

24 17. The Commissioner is authorized pursuant to NAC 645.835(2) to order a person who engages in
25 an activity for which licensure is required under NRS 645F to pay restitution to any person who has
26 suffered an economic loss as a result of a violation of the provisions of the NRS 645F.

27 18. The Commissioner is authorized pursuant to NRS 645F.410(1) to impose an administrative
28 penalty of not more than \$25,000 on any person licensed or required to be licensed pursuant to

1 provisions of NRS 645F who violates any provisions of NRS 645F or any regulation adopted pursuant
2 thereto or any other applicable law.

3 **Order**

4 The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS
5 engaged in activity in violations of NRS 645F and NAC 645F, and concluded and determined that
6 RESPONDENTS should be ordered to: 1) cease and desist violating NRS 645F; 2) pay restitution; 3)
7 pay an administrative fine; and 4) pay the Division's administrative costs.

8 NOW, THEREFORE, IT IS ORDERED that RESPONDENTS shall immediately CEASE AND
9 DESIST from advertising, engaging in, or otherwise carrying on or holding themselves out as engaging
10 in or carrying on any activities of a covered service provider requiring licensure under NRS 645F in the
11 State of Nevada.

12 IT IS FURTHER ORDERED that RESPONDENTS, jointly and severally, shall be and hereby
13 are required to make RESTITUTION to Complainant JR in the amount of \$2,500.00 and to
14 Complainant CL in the amount of \$2,000.00 no later than 30 days after the effective date of this order.

15 IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of \$10,000.00
16 shall be and hereby is imposed, jointly and severally, on RESPONDENTS. The ADMINISTRATIVE
17 FINE shall be due and payable on the 30th day following the effective date of this order and shall be
18 tendered to the Division in accordance with the attached wire transfer instructions.

19 IT IS FURTHER ORDERED that RESPONDENTS shall be and hereby are assessed the
20 Division's ADMINISTRATIVE COSTS in the amount of \$1,170.00. The ADMINISTRATIVE
21 COSTS shall be due and payable on the 30th day following the effective date of this order and shall be
22 tendered to the Division in accordance with the attached wire transfer instructions.

23 IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter
24 only if RESPONDENTS timely request an administrative hearing in accordance with the instructions
25 set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. If
26 no administrative hearing is requested within 20 calendar days of the effective date of this ORDER,
27 RESPONDENTS shall be deemed to have waived and relinquished the right to an administrative
28 hearing in this matter and a FINAL ORDER shall be issued.

1 IT IS FURTHER ORDERED that this Order shall be and is effective and enforceable on the
2 date that it is issued and entered, as shown in the caption hereof.

3 IT IS FURTHER ORDERED that this ORDER shall remain effective and enforceable until
4 terminated, modified, set aside, or suspended in writing by the Commissioner.

5 IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the
6 matters contained herein and has the authority to issue such further order(s) as he shall deem just,
7 necessary, and appropriate to enforce NRS 645F and NAC 645F and protect the public.

8 IT IS SO ORDERED.
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10 DIVISION OF MORTGAGE LENDING

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12 By: 
13 JAMES WESTRIN
14 COMMISSIONER
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II.

NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING
NAC 645F.850 provides as follows:

1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license as required by this chapter or chapter 645F of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 645F of NRS after receiving the order unless the order is suspended or rescinded.

4. Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:

(a) Hold a hearing:

(1) Not later than 30 calendar days after the petition is filed; or

- 1 (2) On a date agreed to by the Commissioner and the person; or
2 (b) Render a written decision within 45 days after the hearing is
3 concluded.

4 5. The decision of the Commissioner after a hearing is a final decision of
5 the Commissioner for the purposes of judicial review. [Emphasis added.]

6 NAC 645F.855 provides as follows:

7 1. If the Commissioner enters an order taking any disciplinary action
8 against a person, denying a person's application for a license, denying a
9 provider the right to teach approved courses, denying the approval of a
10 provider's course or denying the right of an instructor of a provider to
11 teach an approved course or approved courses, the Commissioner will
12 cause a written notice of the order to be served personally or sent by
13 certified mail or telegram to the person.

14 2. Unless a hearing has already been conducted concerning the matter,
15 the person, upon application, is entitled to a hearing. If the person does
16 not make such an application within 20 days after the date of the initial
17 order, the Commissioner will enter a final order concerning the matter.

18 3. A person may appeal a final order of the Commissioner taking any
19 disciplinary action against the person in accordance with the provisions of
20 chapter 233B of NRS that apply to a contested case. [Emphasis added.]

21 **If you wish to exercise your right to an opportunity for an administrative hearing, within**
22 **20 calendar days after receiving this Order, you must file a verified petition with the**
23 **Commissioner to request a hearing.**

24 **The verified petition requesting a hearing must be delivered by Certified First Class US**
25 **Mail or other form of mail delivery that provides a proof of delivery and receipt, or by hand-**
26 **delivery, to:**

**Division of Mortgage Lending
Attn. Susan Slack
7220 Bermuda Road, Suite A
Las Vegas, Nevada 89119**

**If you fail to timely file a verified petition to request a hearing, your right to a hearing to
contest this matter will be deemed waived and relinquished.**

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on, August 21st, 2013, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*, ORDER TO MAKE RESTITUTION, ORDER IMPOSING AN ADMINISTRATIVE FINE AND ADMINISTRATIVE COSTS, AND NOTICE OF OPPORTUNITY FOR HEARING for ABUSED & BATTERED CHILDREN - A-B-C D/B/A NATIONAL REAL ESTATE ASSOCIATION AND BENJAMIN DONLON A/K/A BEN DONLON, addressed as follows:

Benjamin M. Donlon
4039 Grasmere Avenue
Las Vegas, NV 89121

Certified Receipt Number: 7009 2250 0001 8861 2139

DATED this 20th day of August, 2013

By: Susan Slack
Employee of the Division